

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

MILLER PHARMACY SERVICES L L C

CASE NO. 3:22-CV-02424

VERSUS

JUDGE TERRY A. DOUGHTY

**U S DRUG ENFORCEMENT
ADMINISTRATION ET AL**

MAG. JUDGE KAYLA D. MCCLUSKY

MEMORANDUM ORDER

Before the Court is a Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 3] filed by Miller Pharmacy Services, LLC (“Miller”). An Opposition [Doc. No.15] was filed by the United States Drug Enforcement Administration (“DEA”), and a Reply [Doc. No. 16] was filed by Miller on August 15, 2022.

For the reasons set forth herein, Miller’s Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 3] is DENIED.

I. BACKGROUND

Miller is a pharmacy located in Ruston, Louisiana. On June 28, 2022, the DEA issued an Order to Show Cause and Immediate Suspension of Registration (“ISO”)¹ of Miller’s Certificate of Registration (“COR”). The COR provides the legal authority by which a Pharmacy can dispense controlled substances. Miller alleges the DEA has overstepped its authority, seeking a temporary restraining order and/or a preliminary injunction enjoining the DEA’s suspension of Miller’s COR. Miller has requested an administrative hearing, which is set for August 30, 2022.²

The DEA opposes Miller’s motion, arguing Miller cannot show a likelihood of success on the merits or irreparable injury.

¹ [Doc. No. 1-1]

² [Doc. No. 1]

II. LAW AND ANALYSIS

To prevail on a temporary restraining order and/or preliminary injunction, a movant must demonstrate: (1) that it has a substantial likelihood of success on the merits; (2) that it would suffer irreparable injury; (3) that the balance of equities tips in movant's favor; and (4) that an injunction is in the public interest.³ A temporary restraining order and/or preliminary injunction are extraordinary and drastic remedies that should not be granted unless the movant, by a clear showing, carries the burden of persuasion on all four requirements.⁴

Additionally, in reviewing a DEA determination that Miller's continued registration constitutes an imminent danger to public health and safety, the Court must apply the arbitrary and capricious standard of the Administrative Procedures Act.⁵ Absent a finding that a decision was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, plaintiff cannot show a likelihood of success on the merits.⁶

Arbitrary and capricious review focuses on whether an agency articulated a rational connection between the facts found and the decision made.⁷ After reviewing the Immediate Suspension,⁸ submitted by DEA, DEA had a valid basis to make a determination that Miller's continued operation and dispensation posed an imminent danger to the public health or safety. Because the finding is not arbitrary and capricious, Miller is unable to show a substantial likelihood of success on the merits.

In the ISO, the DEA Administrator made specific findings of: (a) "cocktail" and combination dispensing by Miller; (b) instances of pattern prescribing of drugs filled by Miller'

³ *Prudential Mortg. Cap. Co., LLC v. Faidi*, 444 Fed. Appx. 732, 737 (5th Cir. 2011)

⁴ *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)

⁵ 5 U.S.C. § 701, et seq; *Cardinal Health, Inc. v. Holder* 846 F. Supp. 2d 203, 214 (D.D.C. 2012)

⁶ *United Prescription Serv. Inc. v. Gonzalez*, 2007 WL 1526654 (M.D. Fla. May 23, 2007); *Medical Pharmacy, Inc. v. United States Drug Enforcement Adm.*, 2020 WL 8679978 at 2 (M.D. La., July 3, 2020)

⁷ *Exxon Mobile Pipeline Co. v. U.S. Dep't. of Transp.* 867 F.3d 564, 571 (5th Cir. 2017)

⁸ [Doc. No. 15-1]

(c) long distances traveled by Miller's customers; (d) therapeutic duplication; and (e) use of multiple payment methods by Miller. These factors comport with district court decisions addressing a standard of review for a DEA ISO.⁹

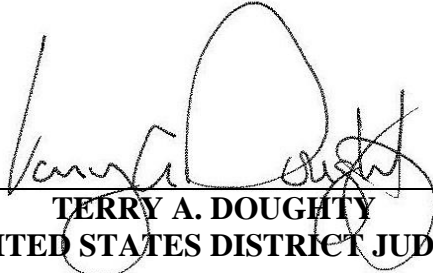
Although Miller contests these findings, Miller is unable to show the DEA findings were arbitrary and capricious at this stage of the proceedings. Because Miller is unable to show a substantial likelihood of success on the merits, there is no need to examine the other three factors.

III. CONCLUSION

For the reasons set forth herein,

IT IS ORDERED that the Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 3] is **DENIED**.

MONROE, LOUISIANA, this 16th day of August 2022.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

⁹ *Cardinal Health*, at 214